

Message Text

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C O N F I D E N T I A L BERLIN 0337

E.O. 11652: GDS

TAGS: PGOV, WB, GW, GE

SUBJECT: INGRID BRUECKMANN CASE

REF: A) BONN 2854; B) BERLIN 331 C) BERLIN 307

D) BERLIN 1432, AUG 21, 1973; E) BERLIN 1129, JUL 5, 1973

1. REF A, WHICH CROSSED REF B, WAS FIRST INDICATION WE HAVE HAD THAT CONSTITUTIONAL COURT MAY BE SEEKING TO DO MORE THAN DETERMINE ROUTINELY IF BRUECKMANN CASE IS BERLIN MATTER. IF COURT IS SEEKING TO DETERMINE, AS FONOFF COMMENTS SUGGEST, WHETHER OR NOT IT HAS GROUNDS TO GIVE ADVISORY CONSTITUTIONAL OPINION IN CASE WITH BERLIN VENUE, WE AGREE MATTER TAKES ON MUCH MORE SERIOUS LIGHT, AND WE WOULD WISH TO RECONSIDER THREE-POINT RECOMMENDED RESPONSE, REF C. STRONGER RESPONSE SUGGESTED BY UK REP, PARA 3 REF A, MIGHT THEN BE APPROPRIATE.

2. WE ARE QUERYING SENAT TODAY ABOUT ITS UNDERSTANDING OF KARLSRUHE COURT'S INTENTIONS, STRESSING THAT UNTIL MATTER CLARIFIED ALLIES REQUIRE THAT NOTHING BE PASSED TO KARLSRUHE.

3. WE WILL ALSO SEEK ADDITIONAL INFORMATION FROM SENAT ON OTHER QUESTIONS RAISED PARA 5 REFTEL. PENDING
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SUCH CLARIFICATIONS AS SENAT MAY BE ABLE TO PROVIDE,

FOLLOWING IS OUR UNDERSTANDING OF THESE POINTS:

A. BRUECKMANN REMAINS IN CUSTODY IN BERLIN PENDING RESOLUTION OF APPEAL TO STRASBOURG. KAMMERGERICHT CONFIRMED DETENTION DECEMBER 10, 1973 REJECTING APPEAL THAT IT WAS IMPROPER TO MAINTAIN HER IN CUSTODY FOR MORE THAN SIX MONTHS WHEN SHE HAD NOT BEEN CONVICTED AND CASE WAS STILL BEING APPEALED. SENATOR FOR JUSTICE KORBER TOLD US FEBRUARY 6 THAT, AS THERE WAS NO DOUBT THAT BRUECKMANN HAD COMMITTED CRIME, SHE COULD CONTINUE TO BE HELD IF APPEAL DRAGGED OUT FOR MANY MORE MONTHS. ULTIMATELY SHE WILL RECEIVE CREDIT FOR TIME SPENT IN JAIL DURING APPEALS AGAINST SENTENCE SHE FINALLY RECEIVES FOR MANSLAUGHTER. UPON PUBLICATION OF KAMMERGERICHT'S MOST RECENT DECISION, GENERALSTAATSANWALT OF GDR WROTE TO KAMMERGERICHT STAATSANWALT EXPRESSING DISPLEASURE THAT GDR JUDICIAL PROCESS WAS TO BE DELAYED STILL FURTHER WHILE BRUECKMANN REMAINED IN WEST BERLIN JAIL AND URGING PROMPT TURNOVER TO GDR AUTHORITIES.

B. SENAT TELLS US, HOWEVER, THAT, AS REPORTED REF D, BRUECKMANN WILL BE RETAINED IN WEST BERLIN UNTIL STRASBOURG AUTHORITIES HAVE ACTED. AT PRESENT, BRUECKMANN HAS APPEAL BEFORE EUROPEAN COMMISSION ON HUMAN RIGHTS ALLEGING THAT EXTRADITION TO GDR WOULD CONSTITUTE VIOLATION OF RIGHTS GUARANTEED UNDER CONVENTION FOR PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS. COMMISSION WILL ULTIMATELY EITHER REJECT APPEAL OR REFER IT FOR DECISION TO EUROPEAN COURT OF HUMAN RIGHTS. FRG ACCEPTED COMPULSORY JURISDICTION OF THAT COURT IN 1971, AND SINCE CONVENTION PROVIDES COURT MAY MAKE BINDING DECISIONS, THEORETICAL POSSIBILITY EXISTS THAT KAMMERGERICHT DECISION COULD BE OVERRULED. WHILE SENAT HAS TOLD US IN PAST THAT IT SEES VIRTUALLY NO CHANCE STRASBOURG BODIES ULTIMATELY WOULD OVERTURN BERLIN COURT DECISION, WE ARE UNAWARE THAT COMMISSION HAS YET ACTED. THIS WOULD INDICATE THAT CASE COULD REMAIN IN STRASBOURG FOR MANY MORE MONTHS, PARTICULARLY IF COMMISSION CHOSE NOT TO REJECT APPEAL OUT OF HAND BUT SEEK COURT DECISION.

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C. OTHER THAN POSSIBILITY THAT STRASBOURG COURT WOULD ISSUE ORDER COMPELLING BERLIN KAMMERGERICHT NOT TO TURN BRUECKMANN OVER TO GDR, OUR UNDERSTANDING IS THAT NO FURTHER LEGAL AVENUES ARE OPEN TO HER. KAMMERGERICHT HAS ALREADY RULED ON CASE, AND IT IS HIGHEST COMPETENT BERLIN AUTHORITY.

D. WE ARE NOT CERTAIN AS TO BASIS OF CONSTITUTIONAL CLAIM BRUECKMANN IS SEEKING TO MAKE IN KARLSRUHE, SINCE

PAPERS FILED WITH COURT ARE NOT AVAILABLE TO US HERE.
JUDGING FROM ARGUMENTS MADE BY HER ATTORNEY, RECHTSANWALT
ROOS, TO BERLIN COURTS LAST SUMMER, HOWEVER, WE ASSUME
SHE IS REFERRING TO ARTICLE 16 OF BASIC LAW, WHICH
PROVIDES THAT GERMAN CITIZEN MAY NOT BE EXTRADITED TO
"FOREIGN COUNTRY." ARGUMENT WOULD BE THAT TRANSFER OF
BRUECKMANN TO GDR AUTHORITIES WOULD CONSTITUTE EXTRA-
DITION TO FOREIGN COUNTRY, DESPITE FACT THAT BRUECKMANN
IS REFUGEE FROM GDR. AS SUPPORT FOR ARGUMENT THAT GDR
IS FOREIGN COUNTRY, LAWYER PRESUMABLY IS CITING BASIC
TREATY BETWEEN FRG AND GDR AS WELL AS GDR ADMISSION
TO UN. BRUECKMANN ARGUMENT WOULD BE THAT THESE DEVELOP-
MENTS HAVE IN EFFECT VOIDED 1953 FRG LAW ON INNER-GERMAN
JUDICIAL AND OFFICIAL ASSISTANCE IN CRIMINAL CASES
PURSUANT TO WHICH BERLIN AUTHORITIES HAVE BEEN ACTING
AND WHICH DISTINGUISHES BETWEEN "ZULIEFERUNG"
TO GERMAN COURT OUTSIDE JURISDICTION OF LAW, I.E., GDR
COURTS, AND "AUSLIEFERUNG" TO COURT OF FOREIGN COUNTRY.
E. BRUECKMANN LAWYER WROTE TO KOMMANDATURA JUNE 28,
1973 REQUESTING AK TO GRANT "AN EXCEPTIONAL AUTHORIZATION
TO APPLY TO THE FEDERAL CONSTITUTIONAL COURT BY CHANGING
THE LEGAL POSITION REGARDING THE STATUS OF BERLIN" OR,
ALTERNATIVELY, IN EVENT THAT KAMMERGERICHT ORDERED HER
EXTRADITION, TO PROHIBIT HER EXTRADITION ON BASIS OF
AK'S SUPREME AUTHORITY. AS REPORTED PARA 7 REF E,
AK LEGAL COMMITTEE GAVE BRIEF NEGATIVE REPLY TO EFFECT
THAT FEDERAL CONSTITUTIONAL COURT HAD NO COMPETENCE IN
BERLIN, AND, SINCE CASE WAS WITHIN COMPETENCE OF BERLIN
JUDICIAL AUTHORITIES, ALLIES WERE NOT PREPARED TO
INTERFERE WITH DUE PROCESS OF LAW.KLEIN

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